

## Gross Receipts:

### Washington: US Supreme Court Denies Reviewing Constitutionality of Added 1.2% B&O Tax on Banks

*Docket No. 21-1066*, US (cert denied 6/13/22). The US Supreme Court denied review of a case challenging the constitutionality of Washington's additional 1.2% business and occupation (B&O) tax on certain "specified financial institutions" pursuant to legislation enacted in 2019 [see SHB 2167 (2019) for more details on this law]. In 2021, the Washington Supreme Court (Court) reversed a trial court to hold that the added 1.2% tax does *not* discriminate against interstate commerce in effect or in purpose but rather "applies equally to all financial institutions meeting the \$1 billion income threshold, irrespective of whether they are based inside or outside of Washington" [see Case No. 98760-2, Wash. (9/30/21) and *State Tax Matters*, Issue 2021-40, for more details on this case]. The Court additionally reasoned that the 1.2% tax is apportioned such that affected institutions remit taxes only on income generated in Washington; and because the imposition is not discriminatory, "the dormant commerce clause is not implicated" but "in any event, the statute satisfies the Pike balancing test." In 2020, a state superior court judge had granted summary judgment in favor of the two bank association challengers, holding that such added 1.2% B&O taxation discriminates against interstate commerce in violation of the Commerce Clause in applying exclusively to select out-of-state financial institutions. Please contact us with any questions.

URL: [https://www.supremecourt.gov/orders/courtorders/061322zor\\_j5fl.pdf](https://www.supremecourt.gov/orders/courtorders/061322zor_j5fl.pdf)

URL: <https://app.leg.wa.gov/bills/billsummary?BillNumber=2167&Initiative=false&Year=2019>

URL: <https://www.courts.wa.gov/opinions/pdf/987602.pdf>

URL: [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211008\\_9.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211008_9.html)

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